

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 7372/2007 & CM APPL 14017/2007

Reserved on: 28th July, 2010

Decision on: 5th August, 2010

M.K.TYAGI

..... Petitioner

Through: Ms. Girija Krishan Varma, Advocate

versus

K.L. AHUJA & ANR.

..... Respondents

Through: Mr. M. Tarique Siddiqui, Advocate for
Respondents 1 and 2.

CORAM: JUSTICE S. MURALIDHAR

- | | |
|---|-----|
| 1. Whether Reporters of local papers may be
allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

05.08.2010

1. The Petitioner, a 'whistle blower' who exposed the acts of corruption of his superior officer, is aggrieved by the unreasonable delay on the part of the Central Vigilance Commission ('CVC') in providing him relevant information pursuant to an application made under the Right to Information Act, 2005 ('RTI Act').

2. The background to the present petition is that the Petitioner while working as the Chief Sales Manager in the Indian Oil Corporation Ltd. ('IOCL') made a complaint on 8th December 1999 against the corrupt practices of the General Manager who was his superior. The Petitioner alleges that the General Manager by way of reprisal got the Petitioner transferred from Mumbai to Bangalore on 9th May 2000 as

Chief Manager (LNG Marketing). On 15th May 2000, the Petitioner wrote to the CVC about the above development and asked for “appropriate action in a court of law against the corrupt officers” of IOCL including his superior.

3. It is stated that the CVC forwarded the Petitioner’s complaint to the Central Vigilance Officer (‘CVO’) IOCL who in turn forwarded it to Manager (Vigilance), Southern Region on 12th August 2000. However, even before the CVO could begin investigations, a departmental inquiry was initiated against the Petitioner on the charge of making of false allegations against his superior officer. On 21st September 2000, the Manager (Vigilance) gave a report that the allegations made by the Petitioner were false. This was followed by a charge sheet being served on the Petitioner on 19th October 2000. In the above circumstances, the Petitioner again wrote to the CVC on 1st November 2000 complaining that he was being harassed for having exposed the corrupt actions of his superior officer. The CVC then wrote to the Chairman, IOCL on 15th December 2000 advising him to ensure that the Petitioner was not harassed or put to any disadvantage. The CVC advised that further proceedings in the charge sheet against the Petitioner should be kept in abeyance till the first stage advice was given by the CVC after investigating the Petitioner’s complaint.

4. After an inquiry into the Petitioner’s complaint, the CVO submitted a report indicting the Petitioner’s superior and others. The report further stated, “it is incorrect to say that he (Mr. Tyagi) had made any

false allegations...It is a case where a subordinate pointed out to his seniors the inappropriateness of certain actions that were prima facie not in line with government policy...It is recommended that IOC management may be advised to close disciplinary proceedings against Mr. Tyagi in this regard.” It is stated that contrary to the above advice, disciplinary proceedings were proceeded with by the IOCL both against the Petitioner’s superior for corruption and against the Petitioner for making ‘false allegations’. The Petitioner states that even after finding the Petitioner’s superior to be guilty, the Disciplinary Authority inflicted on him only a mild penalty of censure. As regards the Petitioner, the Disciplinary Authority closed the proceedings by cautioning him against disclosing such corrupt practices in future. It is stated that apart from this, the victimization and professional harassment of the Petitioner continued unabated. Although his superior, who was found guilty of corrupt practices, continued to be promoted out of turn, the Petitioner’s promotions for the years 1999, 2002 and 2005 were withheld as a punishment for disclosing corruption. According to the Petitioner this was despite the specific advice of the CVC to the IOCL not to harass the Petitioner and despite the repeated representations made by the Petitioner to the IOCL.

5. On 18th October 2005 the Petitioner wrote to the CVC asking to inspect the relevant file concerning the complaint made by him against corruption and asked that “in the meantime copy of letter giving direction to Chairman Indian Oil to promote me in 1999, 2002

and 2005 may kindly be provided to me.” This request he repeated in a letter dated 26th October 2005 to the CVC this time enclosing the requisite fee. This letter was received by the CVC on 27th October 2005. The copies of both letters dated 18th and 26th October 2005 have been placed on record by the CVC itself along with its counter affidavit in these proceedings. By a letter dated 9th November the CVC asked the Petitioner to report to the CPIO of the CVC on 18th November 2005 for inspection of the file and informed that on payment of a fee of Rs.2 per page he would be provided copies of the documents sought by him.

6. The Petitioner inspected the files of the CVC relating to his case on 18th November 2005 and made an application on that day itself to the CVC for supply of certified copies of forty-five documents in the file which were identified by their page numbers. He stated that in addition to the above forty-five pages, he should inter alia be supplied a copy of CVC’s “Registered AD letter dated 22.04.2004 addressed to Secretary from Shri Ashok Singh requesting release of my promotions” and copy of e-mail and UPC message relating to the release of his promotions. The Petitioner sent the CVC e-mails on 19th November 2005, 23rd November 2005 and 25th November 2005 expressing urgency and requesting for immediate supply of the documents.

7. Despite the expiry of thirty days, by which time it was obligatory on the CVC under Section 7(1) of the RTI Act to supply the

information, only a few documents were furnished by the CVC to the Petitioner on 9th December 2005. The letter dated 9th December 2005 written by the CVC to the Petitioner at his address at 3/62, Nanik Niwas, B.D. Road, Mumbai - 400 026, inter alia, stated as under:

“2. Certified photocopies of pages 16-17, 82-83, 89, 100, 226-227-228, 266-267, 347, 348-349-350-351 and 352 (total 17 pages) of the correspondence portion of the Commission’s file No.000/POL/021 are enclosed. The procedure prescribed in Section 11 of the RTI Act is being taken in respect of copies of other documents.”

8. It was pointed out that page 97 of the correspondence portion of the CVC’s file was an internal note dated 13th September 2002 recorded by the Director (Marketing) of the IOCL and, therefore, being a file noting could not be made available. As regards the copy of the inquiry report in the departmental inquiry against the Petitioner’s superior, the CVC advised the Petitioner to approach the concerned disciplinary authorities for certain other information. Letters in this regard were written by the CVC both to the CVO- Ministry of Petroleum and Natural Gas as well as the CVO- IOCL.

9. Since only 17 of the 45 pages of documents were provided, the Petitioner again approached the CVC. The CVC, by a letter dated 26th December 2005, supplied another 17 pages of the documents sought for. The Petitioner submitted an appeal to the Appellate Authority of the CVC on 2nd January 2006 with regard to supply of further 11 pages of the documents that he had asked for. However, there was no response to this.

10. On 31st January 2006, the Petitioner sent an e-mail to the Central Information Commission ('CIC') asking for copies of the following documents:

“A. Page No. 97, because as per Mr. K.L. Ahuja chief public information CVC, the said page pertains to internal notings of Indian Oil.

B. Inquiry report of CDI Mr. Yogesh because as per Mr. Ahuja, Mr. Yogesh was appointed by Chairman Indianoil while the fact of the matter is that Mr. Yogesh was appointed inquiry officer by CVC on 24th June 2002.

C. CVC letter advising Indian Oil not to stop promotions of Mr. Tyagi as well as views of Chief Vigilance Officer of MOP&NG.” (emphasis supplied)

11. It is important to note that the Petitioner was once again asking for the letter at C above since by then he had not received a copy of the said document. He was obviously keen that he should be restored his denied promotions before he retired. He followed this up with a formal appeal to the Central Information Commission (CIC) on 15th February 2006.

12. On 21st February 2006, the Appellate Authority of the CVC wrote a letter to the Petitioner purporting to enclose a copy of the 'internal note' which was earlier declined to be given. According to the Petitioner, however, the copy of the 'internal note' was in fact not enclosed.

13. The CVC on 27th February 2006 issued the following letter to the

Petitioner:

“No.CVC/RTI/APP/CIC/06/003-18747
Government of India
Central Vigilance Commission

Satarkata Bhawan
GPO Complex, Block ‘A’,
INA, New Delhi 110 023,
Dated the 27th February, 2006

To,

Shri MK Tyagi,
222, Siddharth Enclave,
New Delhi-110 014.

Subject: Denial of information by the Central Vigilance Commission – Appeal to the Central Information Commission.

Dear Sir,

Please refer to your appeal dated 15.02.2006, addressed to the Central Information Commissioner, on the above subject.

2. In the appeal to the CIC, it has been alleged, inter alia, that a copy of the letter written by the CVC to the Chairman, Indian Oil Corporation, **directing the latter to release Shri Tyagi’s promotion**, which had been denied to him, was not made available by the CPIO. In this regard, it is mentioned that the Commission’s file was inspected by you and such a paper could not be located. However, **it is observed that the Commission, vide its Secretary’s d.o. letter No.000/POL/021/6384 dated 31.03.2005, had forwarded copies of your two representations dated 03.09.2004 and 08.12.2004 to the Chairman, IOC Ltd, requesting him to ensure that no prejudice is shown when Shri Tyagi’s turn comes for promotion. A copy of the said letter is enclosed.**

Yours faithfully

-sd-
CPIO”

(emphasis supplied)

14. Enclosed with the above letter was a photocopy of the following letter dated 31st March 2005 written by Shri Sujit Banerjee of the CVC to the Chairman, IOCL:

“DO NO.000/POL/021/6384

31 Mar 2005

Dear

I am desired to forward herewith copies of two representations dated 3.09.04 and 8.12.04 received by us from Sh. M.K.Tyagi-Chief Manager, IOCL, the contents of which are disturbing. The Commission is, therefore, of the view that looking to the entire circumstances of the matter the minimum that IOC should be doing is to ensure that no prejudice is shown when Mr. Tyagi's turn comes for promotion.

2. Your attention is also invited, in this connection, to para-3 of Commission's advice dated 19.03.04.

With regards,

Yours sincerely,
Sd/-”

15. The Petitioner claims that the above letter dated 27th February 2006 and its enclosure was perhaps dispatched to his Delhi address when he was away and therefore not received by him. He claims to have seen the letter dated 26th February 2006 and the enclosed copy of the letter dated 31st March 2005 from the CVC to the Chairman IOCL for the first time on 26th February 2008 when copies thereof were enclosed to the CVC's counter affidavit in the present case.

16. It appears that on the same date, 26th February 2006, the CVC wrote to the CIC stating *inter alia* that the report of the disciplinary inquiry against the Petitioner's superior was not final, and was subject to further action by the Chairman, IOCL and therefore, could not be supplied to the Petitioner. As regards the letter dated 31st March 2005

from the CVC to the Chairman, IOCL it was stated that it had been traced and sent to the Petitioner. The relevant paragraph of the letter dated 26th February 2006 from the CVC to the CIC reads as under:

“8. In the appeal before the CIC, the applicant has also alleged that a copy of the letter written by the CVC to the Chairman/Indian Oil Corporation **directing the latter to release his promotion**, which had been denied to him, was not made available by the CPIO. In this regard, it is mentioned that the applicant had inspected the Commission’s file and could not locate such a paper. It is, however, No.000/POL/021/66384 dated 31.03.2005 (copy enclosed-Annexure-VIII), had forwarded copies of two representations dated 03.09.2004 and 08.12.2004 received from Shri Tyagi to the Chairman, IOC Ltd, requesting him to ensure that no prejudice is shown when Shri Tyagi’s turn comes for promotion. A copy of the said letter had been sent to Shri Tyagi (Annexure-IX).”

17. The Petitioner has enclosed the messages exchanged between him and the CVC. The Petitioner alleges that when he visited the office of the CVC on 29th August 2006, the Central Public Information Officer (‘CPIO’) there asked him to withdraw the appeal filed by him against the CVC before the CIC as a pre-condition to his being given a copy of the report of the inquiry into the charges against his superior. The Petitioner states that he did not agree to the said demand and informed the CIC of it on 24th September 2006.

18. The Petitioner was disillusioned with the CIC for not hearing his appeal expeditiously. The Petitioner met the CIC on 6th November 2006, sent a message on 7th November 2006 and a reminder on 6th

December 2006. Yet his appeal was not taken up. In the above circumstances, being frustrated with the delay in the disposal of his appeal by the CIC, the Petitioner filed the present petition.

19. In response to this petition, in its counter affidavit, the CVC claimed that all the 45 pages of the documents were supplied to the Petitioner, the last lot of ten pages having been supplied with its letter dated 17th January 2006. Therefore, there was no grievance left to be agitated. Further, the CVC could not have straightway given the documents which had emanated from the files of the IOCL and the Ministry of Petroleum and Natural Gas and, therefore, notice had to be issued to those authorities under Section 11 of the RTI Act. It is stated that the letters sent to the Bombay address of the Petitioner on 3rd January 2006 and to the Delhi address on 27th February 2006 and 8th March 2006 were returned with the remarks that the Petitioner was not available. This fact was brought to the notice of the CIC which was satisfied with the reply of the CVC. It is, accordingly, submitted that there is no cause of action for the Petitioner to file the present petition.

20. In his rejoinder, the Petitioner claimed that he had informed the CVC of the change of his address from Mumbai to Delhi, and therefore, there was no justification for the CVC to send the letter dated 3rd January 2006 to the Mumbai address. It is then stated in the rejoinder as under:

“It is worthwhile to mention here that the respondent

No.2 had issued a separate letter to the petitioner on 27.2.2006 forwarding therewith the copy of the letter dated 31.3.2005, which was issued by CVC to the Chairman/IOC, directing the latter not to withhold the promotions due to the petitioner. The said letter has not been received by the petitioner because it had been deliberately and intentionally sent at the petitioner's Mumbai address, while as the petitioner was in USA and had specifically requested the respondent No.2 to correspond with him only via net.

Thereafter, vide internet message dated 17.8.2006, CPI, CVC, sent some attachments to the petitioner. However, since the attachments were not legible, the petitioner vide his message dated 17.8.2006 requested the CPIO to again send the attachments as they were not readable. But the petitioner was informed vide communication dated 21.8.2006 by respondent No.2 that there was some technical problem in the hot mail."

21. Ms. Girija Krishan Varma, learned counsel appearing for the Petitioner submitted that the delay on the part of the CVC in supplying to the Petitioner a copy of its letter dated 31st March 2005 advising the Chairman IOCL that the Petitioner's promotion should not be withheld, was unjustified. She pointed out that the said letter which was purportedly enclosed with the letter dated 27th February 2006 from the CVC to the Petitioner at his address at Delhi was never received by the Petitioner but seen by him only when it was enclosed with the counter affidavit filed by the CVC in these proceedings. She drew attention to the fact that the said letter dated 31st March 2005 was at internal page '89' of the file of the CVC inspected by the

Petitioner and for a copy of which a request was again made to the CVC on 8th November 2005. If, as claimed by the CVC, these documents had been supplied earlier, there was no need for the CVC to have separately written a letter to the Petitioner on 27th February 2006 enclosing the said letter. Had these documents been furnished to the Petitioner within thirty days of the application made on 27th October 2005, the Petitioner could have pressed for his case for promotion prior to his retirement. The delay in providing this information thus severely prejudiced the Petitioner and was a sufficient cause to impose penalty on both the Respondents under the RTI Act. Ms.Varma submitted that for the same reason compensation also ought to be awarded to the Petitioner.

22. Mr. Tarique Siddiqui, learned counsel appearing for the CVC submitted that 45 pages of the documents sought by the Petitioner from the CVC had been provided to him in three lots ending with 3rd January 2006. He referred to the letter dated 9th December 2005 which stated that photocopies of pages “16-17, 82-83, 89,100, 226-228.....” (total 17 pages) were enclosed. Page 89 formed part of the said lot. It is submitted that in any event the CVC had been supportive of the Petitioner’s whistleblowing effort and had made recommendation favourable to him to the IOCL. Therefore, there was no intention of the CVC to not furnish any information held by it to the Petitioner. Its actions were *bona fide*. Accordingly, he submitted that there was no case made out for any penalty being imposed on the CVC or any compensation being paid to the Petitioner.

23. The CVC accepts that the Petitioner was a 'whistle blower' who was courageous enough to file a complaint of corruption against his superior. The said complaint was referred to the CVO which conducted an inquiry into the allegations against the Petitioner's superior officer and found that they stood substantiated. It is also not disputed that on 27th February 2006, the CVC wrote to the Petitioner enclosing a copy of the letter dated 31st March 2005 written by the CVC to the Chairman, IOCL advising that the Petitioner's promotion should not be denied. Despite this, the disciplinary authority of the IOCL, even while finding the Petitioner's superior to be guilty of the charge made in the complaint by the Petitioner against him, simultaneously held that the Petitioner should not have made such a complaint and "cautioned him for making such complaint in future".

24. This Court is not required to examine in this petition whether the IOCL was justified in 'cautioning' the Petitioner for making a complaint against his superior. What this petition is essentially concerned with is whether the CVC unjustifiably delayed providing a copy of the letter dated 31st March 2005 written by it to the IOCL. It was indeed a valuable document for the Petitioner. It vindicated the Petitioner as a 'whistle blower' and his stand that he was being unfairly denied promotions for being a 'whistle blower'. Considering that the Petitioner's retirement was in December 2005, had he been given a copy of the said communication dated 31st March 2005 from the CVC to the Chairman IOCL soon after it had been made, it might have helped in expediting his case for being granted the denied

promotions prior to his retirement.

25. There is no explanation forthcoming from the CVC as to why this letter was not provided to the Petitioner till as late as 27th February 2006. Although the information sought by the Petitioner was supplied in instalments till 17th January 2006, there is no indication why a copy of the letter dated 31st March 2005 from the CVC to the Chairman IOCL which was repeatedly sought by the Petitioner was not provided to him. There was obviously only one such letter and that was what the Petitioner was seeking right from the beginning. Admittedly, this letter was not enclosed with any of the CVC's earlier letters to the Petitioner, i.e., the letters dated 9th December 2005, 26th December 2005, 3rd January 2006 and 17th January 2006. It will be recalled that this document was in addition to the 45 pages of documents sought by the Petitioner. Also, as noted in the letter dated 27th February 2006 it had not been located by the Petitioner during his inspection of the files with the CVC. The CVC claimed in the said letter dated 27th February 2006 that it found in its records a copy of the letter dated 31st March 2005 addressed by it to the IOCL. There can be no manner of doubt that a copy of the said letter was not provided to the Petitioner earlier than 27th February 2006. This is without going into the controversy that the said letter was returned to the CVC undelivered as the house was locked and that it was seen by the Petitioner for the first time only when the counter affidavit of the CVC was filed in this petition in February 2008. In other words, this Court is proceeding on the CVC's own version that it sent this letter to the Petitioner for the first time on

27th February 2006 and not earlier. Even going by this, there is a delay in furnishing the information.

26. As far as the letter dated 31st March 2005 is concerned, which from the Petitioner's point of view was most critical for him, there is no satisfactory explanation by the CVC for the delay in supplying a copy of the said letter to him beyond thirty days after 27th October 2005, on which date the CVC received the Petitioner's application under the RTI Act, together with the requisite fee, for supply of the copy of the message sent by the CVC asking that his past denied promotions be released. The said letter did not constitute 'third party' information as it did not emanate from anyone other than the CVC itself. It directly concerned the withheld promotions of the Petitioner. Even if the other documents pertaining to the disciplinary inquiry against the Petitioner's superior were perhaps available with the IOCL, a copy of the letter written by the CVC to the IOCL obviously was available on the file of the CVC itself. That is how the CVC ultimately furnished a copy of the said letter to the Petitioner on 27th February 2006.

27. It is submitted by Mr. Siddiqui that the CVC had nothing against the Petitioner. He submitted that the Petitioner was not an employee of the CVC and so there was no reason why the CVC would deliberately not furnish such information to the Petitioner.

28. The Petitioner not being an employee of the CVC hardly provides

justification for the delay in the CVC supplying him a copy of its letter dated 31st March 2005 to the IOCL. The question here is not about the motive behind the non-supply of information within time, but the plain and simple fact that there was a delay “without any reasonable cause” thus attracting the penalty leviable under Section 20(1) of the RTI Act. The proviso to Section 20(1) states that the burden of showing that he acted reasonably and diligently shall be on the CPIO or the State PIO as the case may be.

29. The explanation offered by the CVC is not sufficient to excuse the delay in furnishing the information. The CVC has not been able to show that it acted ‘reasonably or diligently’ in the circumstances outlined hereinbefore. However, this Court would lay the responsibility for this delay in providing information collectively on the CVC and not on its CPIO alone. The exercise that the Court is now undertaking should in the usual course have been performed by the CIC in the appeal filed before it by the Petitioner. But for some reason, the CIC did not take up the appeal for a long time and this compelled the Petitioner to approach this Court. The Petitioner is right in contending that if the matter again goes back to the CIC only for the purpose of determining what should be the penalty and the compensation payable by the CVC, it would needlessly delay the matter further.

30. The information sought for by the Petitioner from the CVC first

on 18th October 2005, and then on 27th October 2005 i.e. the CVC's advice to the IOCL on his promotions, was ultimately dispatched to him only on 27th February 2006. It should have been given to him in terms of Section 7(1) of the RTI Act by 26th November 2005 at the latest. There is therefore a delay of over 90 days in the CVC providing information to the Petitioner. The period of delay is nevertheless limited to 90 days on the assumption that the information was finally dispatched by the CVC to the Petitioner on 27th February 2006, although the Petitioner claims not to have been delivered the said letter and therefore not to have seen it till the counter affidavit was filed by the CVC on 26th February 2008. There can also be no doubt that the delay in furnishing the information to the Petitioner has caused him severe prejudice inasmuch as he was unable to seek the restoration of his denied promotions prior to his retirement in December 2005. Accordingly a penalty at the rate of Rs. 250/- for every day's delay, as mandated under Section 20(1) of the RTI, totalling Rs. 22,500/- (90 x 250) is directed to be paid by the CVC to the Petitioner within a period of 4 weeks from today.

31. As regards the question of compensation payable in terms of Section 19(8)(b) of the RTI Act, this Court is of the view that the said amount is not capable of easy quantification. The interests of justice would be served if the CVC is instead asked to pay the Petitioner the costs of this petition which are quantified as Rs. 30,000/-. The said amount should also be paid by the CVC to the Petitioner within a period of 4 weeks from today. This order will also dispose of the

Petitioner's appeal pending before the CIC.

32. With the above directions, the writ petition and the pending application are disposed of. Copies of this order be delivered forthwith to both the CVC and the CIC.

S. MURALIDHAR, J

AUGUST 5, 2010

ak